IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 218 of 1992
With
CRIMINAL APPEAL No. 275 of 1993 (Transferred Appeal)
With
CRIMINAL MISC.APPLICATION Nos. 13084 and 13088 of 2007
In
CRIMINAL APPEAL No. 218 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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STATE OF GUJARAT - Appellant(s)
Versus
RAMSINH M PADHIYAR & 6 - Opponent(s)

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Appearance :

Cr.A.No.218 of 1992

MS DS PANDIT,LD.APP for Appellant(s) : 1,

MR JITENDRA M PATEL for Respondent (s) : 1 – 7.

Cr.A.No.275 of 1992 (Transferred Appeal)

MR JITENDRA M PATEL for Appellants.

MS DS PANDIT,LD.APP for Respondent-State.

Crim.Misc. Application No.13084 of 2007

MR JITENDRA M PATEL for Applicants.

MS DS PANDIT,LD.APP for Opponent-State.

MR UM Shastri for complainant-victims.

Crim.Misc. Application No.13088 of 2007

MR UM Shastri for Applicant.

MS DS PANDIT,LD.APP for Opponent-State.

MR JITENDRA M PATEL for Opponents-accused.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 01/11/2007

ORAL JUDGMENT

1. Heard Shri Jayraj P. Chauhan, learned counsel appearing on behalf of Shri Jitendra M. Patel for the appellants of Criminal Appeal No.275 of 1993, who are the original accused persons (hereinafter referred to as 'the appellants-accused'); Ms. D.S. Pandit, learned Additional Public Prosecutor, appearing on behalf of the respondent-State, appellant of Criminal Appeal No.218 of 1992 (hereinafter referred to as 'the respondent-State') and Shri U.M. Shastri, learned counsel appearing for the applicant of Criminal Misc. Application No.13088 of 2007.

2. Today the learned counsel appearing for the parties have submitted the compromise pursis, wherein there are thumb impressions as well as signatures of the concerned parties. Out of

the said parties, four of them are present in the Courtroom and they have been identified by their respective advocate. However, they have admitted their signatures as well as thumb impressions.

3. The appellants-accused persons have jointly prayed under Section 320 of the Code of Criminal Procedure, 1973 that they may be permitted to compound the offence as they have arrived at a settlement out of the Court with the complainant as well as other injured victims examined. The written compromise is tendered to the Court through their lawyer. Shri U.M. Shastri, learned counsel appearing for the appearing for the complainant and the injured witnesses, confirms that because of willful settlement arrived at between the parties they have decided to compound the offence with the appellants-accused. They have arrived at the said compromise without any influence or pressured. Basically the parties are close relatives. It is mentioned in the compromise pursis that they are cousins and

hailing from the same family and the dispute was in reference to an agricultural land. Therefore, the Court by recording subjective satisfaction may permit the parties to compound the matter and disposed of the Criminal Appeal preferred by the appellants-accused as well as respondent-State.

4. The learned trial Judge held the appellant-orig.accused nos.1 and 5 guilty for the charge of offences punishable under Sections 147, 148, 149, 323, 324, 325, 447 and 504 of the Indian Penal Code and each of them has been sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.500/-, in default of payment of fine, shall undergo rigorous imprisonment for 15 days. The appellants-orig.accused nos.2,3 and 4 have been held guilty for the charge of offences punishable under Sections 147, 148, 149, 323, 324 and 504 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one month and a fine of Rs.250/- and in default of payment of fine, shall undergo

rigorous imprisonment for 10 days.

5. The appellants-orig.accused nos.6 and 7 have been held guilty for the charge of offences punishable under Sections 147, 148, 149, 447, 323 and 504 of the Indian Penal Code and the sentence imposed against them by the learned trial Judge was of TRC and to pay a fine of Rs.200/- and in default of payment of fine, shall undergo simple imprisonment for five days.

6. The respondent-State has preferred an appeal under Section 377 of the Code of Criminal Procedure, 1973 i.e. Criminal Appeal No.218 of 1992 for enhancement of punishment and, therefore, the appeal preferred by the appellants-accused before the Sessions Court challenging the legality and validity of the judgment and order of conviction and sentence was called for by this Court and the same came to be registered as Criminal Appeal No.275 of 1993 (Transferred Appeal). The offences punishable under Sections 323, 504 and 447 of

the Indian Penal Code are compoundable offences and no formal permission of the Court is even required. However, the offences punishable under Sections 323, 324 and 325 are not the offences which can be compounded with the permission of the Court and if the Court is satisfied that the compromise arrived at between the parties is genuine and the parties have compounded the offence without any fear or pressure, such permission can be accorded, is the settled legal position. The crucial question raised before the Court is whether the appellants-accused can be permitted to compound the offences punishable under Sections 147, 148 and 149 of the Indian Penal Code being the offences of rioting, or not; and all the aforesaid three offences are the offences punishable independently of the other offences which have been found proved. The plain reading of Section 320 of the Code of Criminal Procedure, 1973 states that these offences are not compoundable offences. But when the parties have compounded for the

substantive offences, the Court can take lenient view and permit them to compound the offences. Undisputedly, the incident in question is of February 1989. It was a quarrel between two close relatives on trivial issue as such offence of rioting was not against the State administration directly or it has not affected the public tranquility, harmony or law and order. In one of the decisions of the Allahabad High Court, the Court has observed that the Court can take a lenient view asnd can permit the parties to compound the offence of rioting punishable under Section 149 of the Indian Penal Code. In the said decision, the substantive offences punishable under Sections 323, and 324, which were found proved, were compounded by the parties and the Court had accorded permission to compound the said offences. There are more than one decision of other Courts including one decision of the Bombay High Court. Here it would be relevant to note that in the case of ***Rajinder Singh v. The State (Delhi Asdmn.), reported in AIR 1980***

SC 1200, the Apex Court has observed in paragraph no.2, *"The other offence under Section 452 is not compoundable. Under the circumstances, while maintaining conviction of the petitioner under the said provision of law we reduce the sentence to the period already undergone. He may be released forthwith."* In the present case, the appellants-accused have undisputedly remained in police custody for more than a day but when this Court is of the view that the parties can be permitted to compound the offence. When the substantive offences have been compounded by the parties, it would not be proper for the Court to uphold the judgment and order of conviction and sentence recorded by the learned trial Judge. The request to compound the offences under Section 320 of the Code of Criminal Procedure, 1973 is required to be accepted.

7. So far as the appeal preferred by the respondent-State is concerned, Ms.D.S.Pandit, learned Additional Public Prosecutor, submits

that as the parties have been permitted to compound the main offences punishable under Sections 323, 324 and 325 of the Indian Penal Code, the question of enhancement of punishment for the offences punishable under Sections 147, 148 nd 149 of the Indian Penal Code only would remain. But considering the inter-se relations between the parties, appropriate orders may be passed so that harmony amongst the family members can be maintained.

8. Ms.D.S. Pandit, learned Additional Public Prosecutor, has rightly submitted that when the Apex Court has observed in the case of Rajinder Sigh (supra) that in a given case the State perhaps would not have a good case for enhancing the punishment as the incident is very old and the appellants-accused were under the hanging sword of judgment and order of conviction and sentence since years i.e. since the year 1992. So the appeal preferred by the respondent-State even can be disposed

of accordingly on this count.

9. In view of aforesaid observations and discussion, both the applications i.e. Criminal Misc. Application Nos.13084 and 13088 of 2007 are allowed and the parties are permitted to compound the offences in question.

10. So far as the ***Criminal Appeal No.218 of 1992*** preferred by the appellant-State under Section 377 of the Code of Criminal Procedure, 1973, is concerned, ***the same is dismissed*** in view of permission to compound the offence granted by this Court to the parties.

11. In view of the compromise arrived at between the parties, the appeal preferred by the appellants-orig.accused persons i.e. ***Criminal Appeal No.275 of 1993 is allowed*** and the judgment and order of conviction and sentence dated 14th October 1991 passed by the learned Judicial Magistrate First Class, Karjan in Criminal Case No.639 of 1989, is quashed and

set aside. The appellants are ordered to be acquitted from all the charges levelled against them in respect of the offence in question. The bail bonds, if any, shall stand discharged. The amount of fine, if any paid, be refunded to the appellants on proper identification.

(C.K. Buch, J)

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